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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XR006

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Service Pier Extension Project on Naval Base Kitsap Bangor, Washington.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from the United States Navy for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates that are one year later (July 16, 2020 – July 15 2021). The initial IHA authorized take of five species of marine mammals, by Level A and Level B harassment, incidental to construction associated with the Service Pier Extension project (SPE) at Naval Base Kitsap Bangor, Washington. The project has been delayed and none of the work covered in the initial IHA issued in 2018 will be initiated under the effective dates of that IHA (July 16, 2019 through July 15, 2020). The scope of the activities and anticipated effects remain the same, authorized take numbers would not change, and the required mitigation, monitoring, and reporting would remain the same as authorized in the 2018 IHA referenced above. NMFS is, therefore, issuing a second IHA to cover the incidental take analyzed and authorized in the initial IHA.

DATES: This authorization is effective from July 16, 2020 to July 15, 2021.

ADDRESSES: An electronic copy of the final 2018 IHA previously issued to the Navy, the Navy's application, and the **Federal Register** notices proposing and issuing the 2018 IHA may be obtained by visiting <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed below (see FOR FURTHER INFORMATION CONTACT).

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On June 28, 2018, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the SPE project at Naval Base Kitsap Bangor (83 FR 30406). The effective dates of that IHA were July 16, 2019 through July 15, 2020. On February 4, 2019, the Navy informed NMFS that the project was being delayed by one year. None of the work identified in the IHA (i.e. pile driving and removal) has occurred and no take of any marine mammals has occurred since the effective date of the initial IHA is July 16, 2019. The Navy submitted a formal request for a new identical IHA that would be effective from July 16, 2020 through July 15, 2021, in order to conduct the construction and demolition work that was analyzed and authorized through the previously issued IHA. Therefore, an IHA is appropriate.

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

Planned activities include extending the service pier to provide additional berthing capacity and improving associated facilities for existing homeported and visiting submarines at Naval Base Kitsap Bangor. Specifically, the location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the original IHA. The mitigation and monitoring are also identical to the original IHA and will include limiting construction to an in-water work window (July 16 – January 15), limiting construction to daylight hours only, using bubble curtains during impact driving of steel piles, using soft-start during impact pile driving, and monitoring and reporting of qualified protected species observers (PSOs).

Species that are expected to be taken by the planned activity include killer whale (*Orcinus orca*), harbor porpoise (*Phocoena phocoena vomerina*), harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), and Steller sea lion (*Eumetopias jubatus monteriensis*). The 2018 IHA authorized, by Level B harassment, 48 killer whale takes, 2,728 harbor porpoise takes, 503 Steller sea lion takes, 7,816 California sea lion takes and 5,600 harbor seal takes. NMFS also authorized 125 takes of harbor seal by Level A harassment. A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The methods of estimating take are identical to those used in the previous IHA, as is the density of marine mammals. NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our

original analysis of impacts or take estimate under the original IHA and, in fact, the abundance estimates reported in the draft SARs did not change for any of the species for which take is authorized in this authorization.

We refer to the documents related to the previously issued IHA, which include the Federal Register notice of the issuance of the 2018 IHA for the Navy's construction work (83 FR 30406), the Navy's application, the Federal Register notice of the proposed IHA (83 FR 10689), and all associated references and documents.

Determinations

The Navy will conduct activities identical to those analyzed in the previous 2018 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the 2018 IHA and no new information has emerged that would change those findings.. The re-issued 2019 IHA includes identical required mitigation, monitoring, and reporting measures as the 2018 IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. §§ 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. § 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

However, no incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to the Navy for in-water construction activities associated with the SPE project from July 16, 2020 through July 15, 2021. All previously described mitigation, monitoring, and reporting requirements from the 2018 IHA are incorporated.

Dated: June 26, 2019.

Catherine Marzin,

Acting Director, Office of Protected Resources,

National Marine Fisheries Service.

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